

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 2006- 15

AN ORDINANCE ANNEXING 35.78 ACRES, APPROVING CACH CREEK AREA ANNEXATION (ZCA2006-00002), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(b), ORS 222.125, and ORS 222.170(1) and (2) to annex contiguous territory upon receiving written consent from owners of land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on September 26, 2006, to consider the annexation of eight (8) parcels (WCTM 2S105DB, Tax Lots 6100, 6200 & 400; WCTM 2S105DC, Tax Lots 201, 300 & 400; and WCTM 2S105DD, Tax Lots 200 & 300) of land located adjacent to and west of SW Sunrise Lane, and adjacent to and north of SW Bull Mountain Road, including right-of-way on SW Sunrise Lane and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District on September 26, 2006; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council hereby annexes the parcels described in the attached Exhibit "A" and shown in Exhibit "B" and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 2: The Tigard City Council adopts the "Staff Report to the City Council," as amended by the memorandum from Emily Eng, dated October 5, 2006, as findings in support of this decision; a copy of the staff report including the amending memorandum is attached hereto as Exhibit "D" and incorporated herein by this reference.

SECTION 3: The Tigard City Council adopts "Supplemental Findings in Support of Cach Creek Area Annexation" as findings in support of this decision. A copy of the Supplemental Findings in Support of the Annexation is attached as Exhibit A to Addendum 1 to the Staff Report and incorporated by this reference.

SECTION 4: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 5: City staff is directed to take all necessary measures to implement the annexation, including certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 6: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

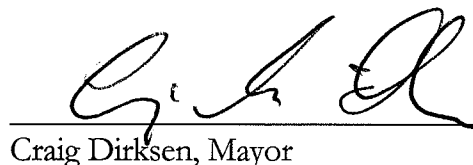
SECTION 7: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2007.

SECTION 8: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 10th day of October, 2006.


Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this 10th day of October, 2006.


Craig Dirksen, Mayor

Approved as to form:


City Attorney

10/10/06
Date

ANNEXATION DESCRIPTION

A tract of land situated in the Section 5, Township 2 South Range 1 West Willamette Meridian described as follows:

Beginning at the Northeast Corner of Stanhurst; thence N 00° 47' 29" E a distance of 1227.67 feet; thence N 00° 47' 29" E a distance of 225.00 feet; thence S 88° 52' 17" E a distance of 341.09 feet; thence S 00° 47' 29" W a distance of 225.00 feet; thence N 88° 52' 17" W a distance of 117.09 feet; thence S 00° 11' 04" E a distance of 348.04 feet; thence S 89° 12' 37" E a distance of 420.08 feet; thence S 01° 12' 28" W a distance of 615.64 feet; thence N 88° 41' 47" E a distance of 356.41 feet to the westerly right-of-way of SW Sunrise Lane; thence along the said westerly right-of-way the following 7 courses; thence N 14° 18' 07" W a distance of 11.36 feet; thence N 16° 59' 53" E a distance of 92.68 feet; thence N 43° 18' 47" E a distance of 111.75 feet; thence N 04° 36' 28" E a distance of 155.66 feet; thence N 01° 25' 58" E a distance of 131.41 feet; thence N 18° 08' 48" W, along said westerly right-of-way, a distance of 101.59 feet; thence N 05° 04' 06" E, along said westerly right-of-way, a distance of 89.57 feet; thence S 84° 55' 54" E leaving said westerly right-of-way, a distance of 40.00 feet to the easterly right-of-way of SW Sunrise Lane; thence N 84° 18' 39" E a distance of 123.69 feet; thence S 87° 13' 42" E a distance of 312.82 feet; thence S 01° 01' 50" W a distance of 304.42 feet; thence N 89° 28' 08" W a distance of 409.21 feet to the easterly right-of-way of SW Sunrise Lane; thence, along said easterly right-of-way the following 8 courses, S 01° 25' 58" W a distance of 11.28 feet; thence S 04° 36' 28" W a distance of 171.82 feet; thence S 43° 18' 47" W a distance of 116.45 feet; thence S 16° 59' 53" W a distance of 72.12 feet; thence S 14° 18' 07" E a distance of 184.66 feet; thence S 04° 12' 11" W a distance of 330.61 feet; thence S 00° 35' 17" W a distance of 322.91 feet; thence S 00° 15' 17" W a distance of 68.92 feet to the northerly right-of-way of SW Sunrise Lane; thence S 89° 49' 00" E, along said northerly right-of-way, a distance of 237.80 feet; thence S 00° 43' 00" W, along said northerly right-of-way, a distance of 20.00 feet; thence S 89° 49' 00" E, along said northerly right-of-way, a distance of 920.60 feet; thence S 00° 56' 05" W a distance of 20.00 feet; thence N 89° 49' 00" W a distance of 4.92 feet to the northwest corner of lot 19 Bull Mountain Estates; thence S 00° 11' 00" W, along the west line of said lot 19, a distance of 15.00 feet to the extension of the southerly right-of-way of SW Sunrise Lane; thence N 89° 49' 00" W, along said southerly right-of-way, a distance of 251.37 feet to the northwest corner of lot 18 Bull Mountain Estates; thence N 00° 25' 58" E, a distance of 15.00 feet to the northwest corner of Bull Mountain Estates; thence N 89° 49' 00" W, along southerly right-of-way of SW Sunrise Lane, a distance of 941.78 feet to the westerly right of way of SW Sunrise Lane; thence N 00° 15' 17" E, along said westerly right-of-way, a distance of 109.57 feet; thence N 00° 35' 17" E, along said westerly right-of-way, a distance of 175.45 feet; thence N 89° 47' 37" W a distance of 310.04 feet; thence S 00° 31' 09" W a distance of 130.19 feet; thence N 89° 49' 00" W a distance of 284.88 feet; thence S 00° 47' 38" W a distance of 155.00 feet; thence N 89° 49' 00" W a distance of 135.00 feet; thence N 00° 47' 38" E a distance of 155.00 feet; thence N 89° 49' 00" W a distance of 300.00 feet to the easterly line of Stanhurst; thence N 00° 47' 29" E, along said easterly line, a distance of 510.55 feet to the point of beginning.

Containing 35.78 acres.

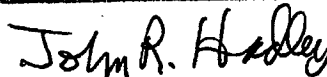
ANNEXATION CERTIFIED

BY 

OCT 02 2006

WASHINGTON COUNTY A & T
CARTOGRAPHY

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
July 18, 1980
JOHN R. HADLEY
1894

EXCEPTING

A tract of land situated in the Section 5, Township 2 South Range 1 West Willamette Meridian described as follows:

Commencing at the Northeast Corner of Stanhurst; thence N 00° 47' 29" E a distance of 262.71 feet; thence S 89° 10' 59" E a distance of 624.11 feet; thence S 01° 05' 50" W 10.03 feet; thence N 88° 41' 59" E a distance of 217.00 feet to **The True Point of Beginning**; thence S 05° 00' 48" E a distance of 227.46 feet; thence S 05° 07' 52" W a distance of 115.66 feet; thence S 89° 49' 00" E a distance of 181.95 feet; to the westerly right of way of SW Sunrise Lane; thence N 04° 12' 11" E, along the westerly right-of-way of SW Sunrise Lane, a distance of 183.76 feet; thence N 14° 18' 07" W, along the westerly right-of-way of SW Sunrise Lane, a distance of 168.15 feet; thence S 88° 41' 59" W a distance of 163.44 feet to the true point of beginning

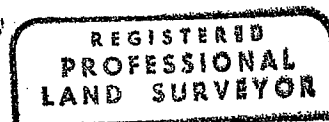
Containing 1.42 acres

ANNEXATION CERTIFIED

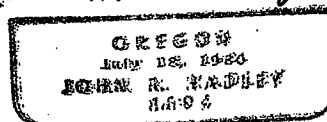
BY JAH

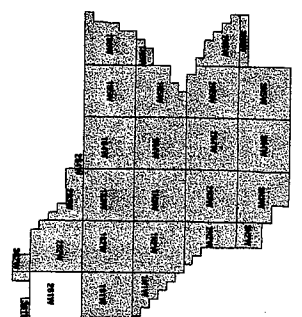
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WASHINGTON COUNTY A & T
CARTOGRAPHY

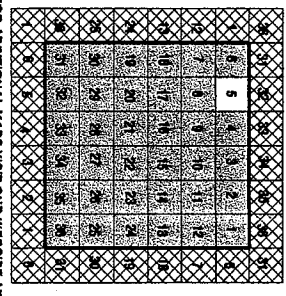


John R. Hadley

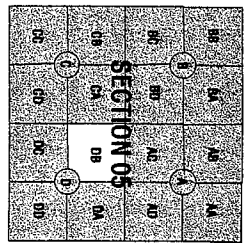




WASHINGTON COUNTY OREGON
NW 1/4 SECTION 05 T2S R1W N1/4
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
WWW.CO.WASHINGTON.ORG



Cancelled Taxlots For: 28105DB
\$100,000.000.000.
ANNEXATION CERTIFIED

BY: *[Signature]*
OCT 0 2 2006
WASHINGTON COUNTY A & T
CARTOGRAPHY



ASSESSMENT
CARTOGRAPHY, INC.
PLOT DATE: May 23, 2002
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE
Map areas delineated by other gray shading or a cross-hatched
pattern are for reference only and may not indicate the most
current property boundaries. Please consult the appropriate map
for the most current information.

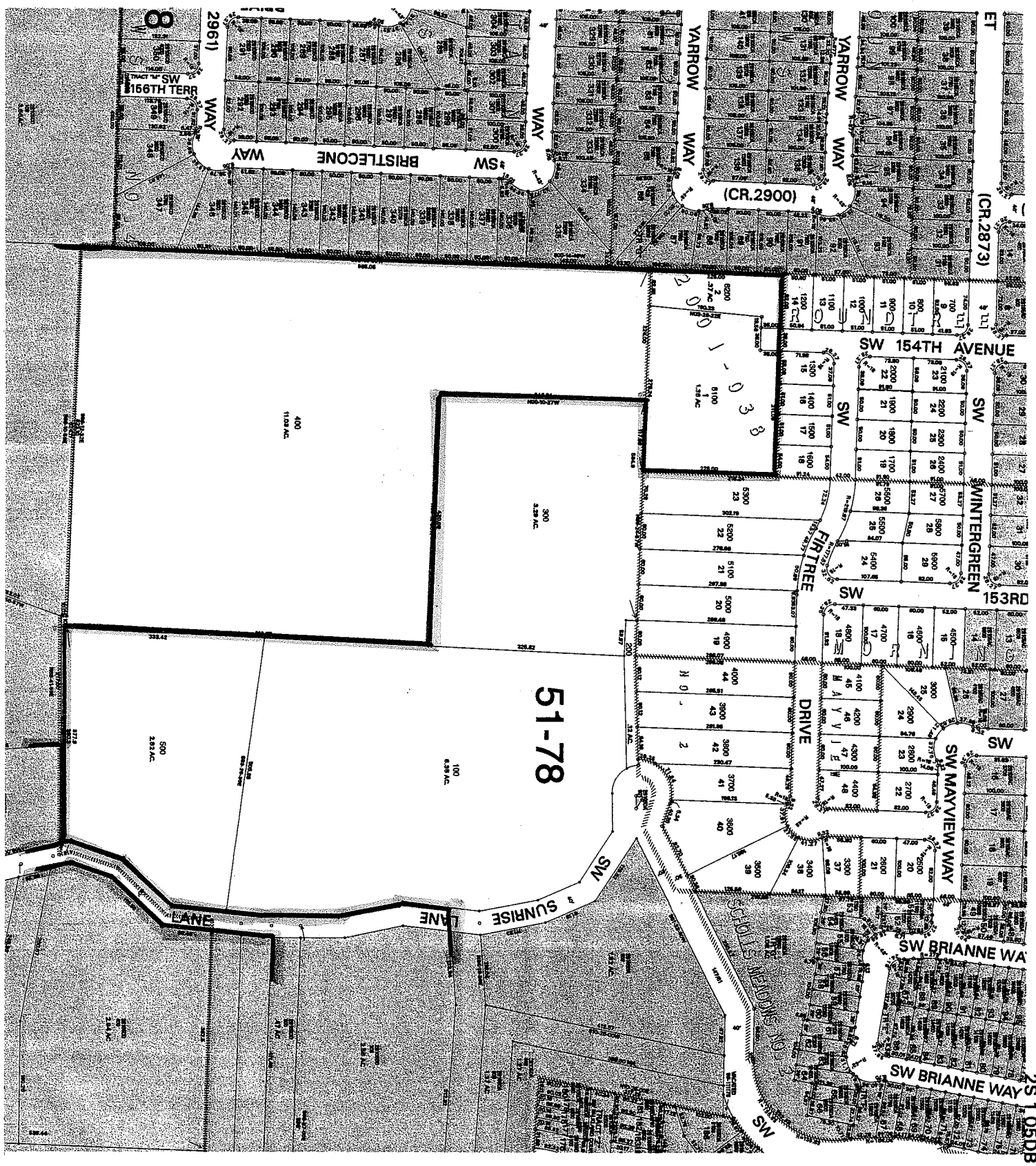
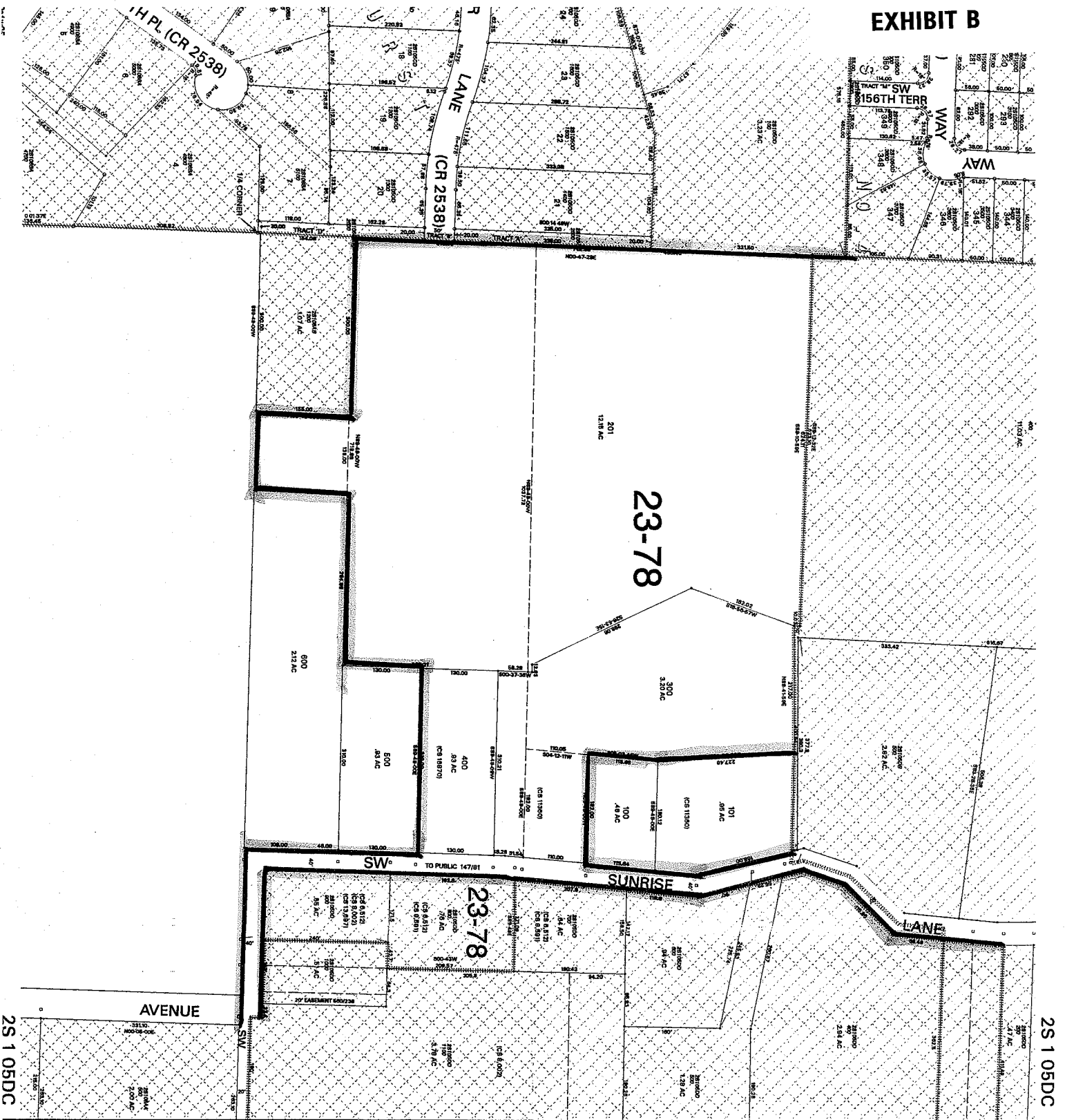
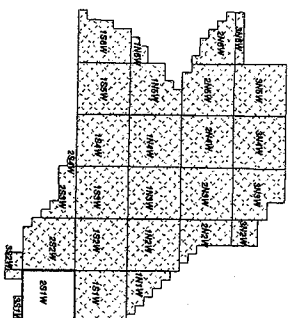


EXHIBIT B



2S 1 05DC

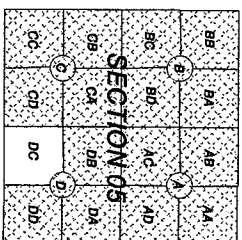
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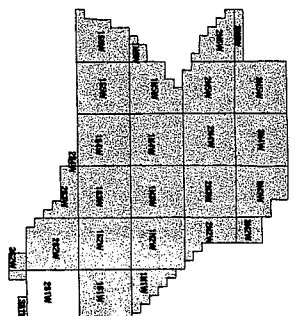


WASHINGTON COUNTY OREGON
SW1/4 SECTION 05 T2S R1W W.M.
SCALE 1" = 100'

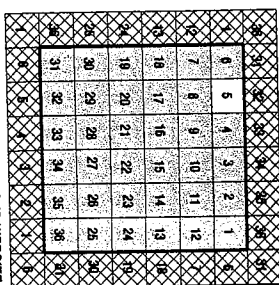
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FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
WWW.CO.WASHINGTON.ORG

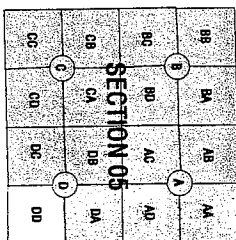




WASHINGTON COUNTY OREGON
SE 1/4 SE 1/4 SECTION 06 T2S R11W M.1M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE A
WWW.CO.WASHINGTON.ORG



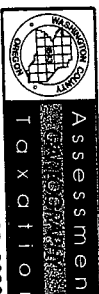
Canceled Taxable For: 26105000
101,000/2,000,000.

ANNEXATION CERTIFIED

BY *[Signature]*

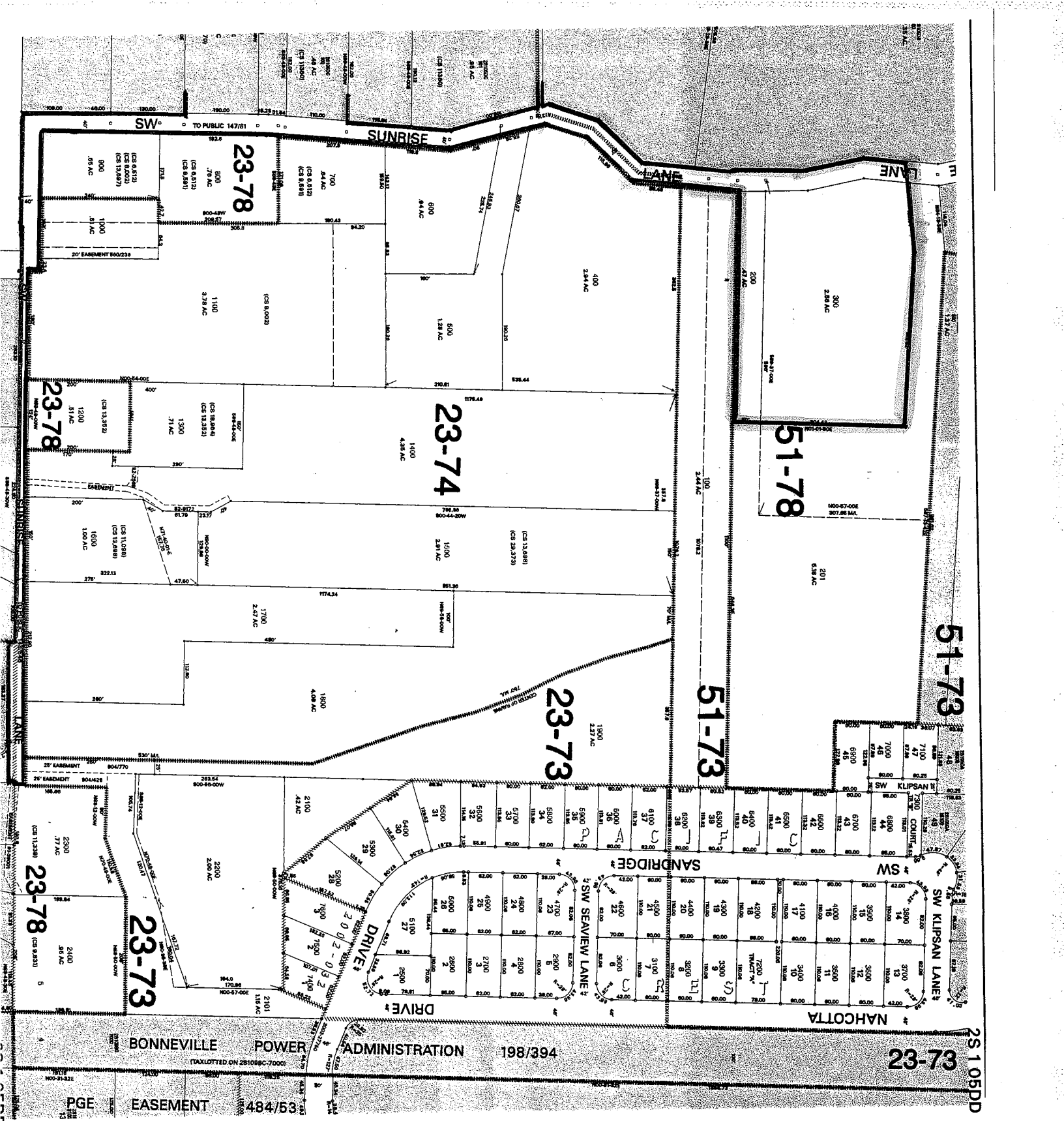
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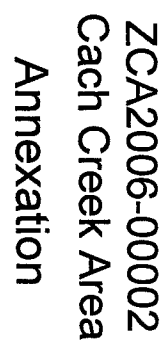
WASHINGTON COUNTY A & T
CARTOGRAPHY



PLAT DATE: February 23, 2006
FOR ASSESSMENT PURPOSES
ONLY FOR OTHER USE

Map made available for public use as a courtesy of the Assessor's Office. It is not intended to be used for any other purpose. The Assessor's Office is not responsible for any errors or omissions in this map. Please contact the Assessor's Office for the most current information.



CITY OF TIGARD
GEOGRAPHIC INFORMATION SYSTEM

**Proposed
Annexation Area**

✓ City of Tigard City Limits

Information on this map is for general location only and should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Agenda Item: _____

Hearing Date: September 26, 2006 Time: 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



120 DAYS = N/A

SECTION I. APPLICATION SUMMARY

FILE NAME: _____ **CACH CREEK AREA ANNEXATION**
CASE NOS: Zone Change Annexation (ZCA) **ZCA2006-00002**

**APPLICANT/
COORDINATOR
(Multiple
applicants):**

City of Tigard
 Contact: Beth St. Amand
 13125 SW Hall Blvd.
 Tigard, OR 97223

OWNER:

City of Tigard
 Contact: Dennis Koellermeier
 13125 SW Hall Blvd.
 Tigard, OR 97223

OWNER:

Tigard Water District
 PO Box 23000
 Tigard, OR 97223

OWNER:

Jon Dyer
 PO Box 848
 Lake Oswego, OR 97304

OWNER:

Sun Ridge Builders, Inc./
 Brentwood Homes
 Contact: John Noffz
 15170 SW Finis Lane
 Tigard, OR 97224

PROPOSAL:

The applicant is requesting annexation of ~~twelve (12)~~ eleven (11) parcels and the Sunrise Lane right-of-way containing ~~41.41~~ a total of 40.93 acres into the City of Tigard.

LOCATION:

Abutting and west of Sunrise Lane, and abutting and north of SW Bull Mountain Road, including right-of-way on SW Sunrise Lane; Washington County Tax Assessor's Map No. (WCTM) 2S105DB, Tax Lots 6100, 6200 & 400; WCTM 2S108AB, Tax Lots 1200 & 1201; WCTM 2S105DC, Tax Lots 100, 201, 300 & 400; and WCTM 2S105DD, Tax Lots 200 & 300.

**CURRENT
ZONING****DESIGNATION:**

R-6 District (Residential 6 Units Per Acre). The purpose of the Washington County R-6 District is to implement the policies of the Comprehensive Plan for areas designated for residential development at no more than six (6) units per acre and no less than five (5) units per acre, except as specified by Section 300-2 or Section 303-6. The intent of the R-6 District is to provide the opportunity for more flexibility in development than is allowed in the R-5 District.

**EQUIVALENT
CITY ZONING
DESIGNATION:**

R-7: Medium-Density Residential District. The City of Tigard R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

**APPLICABLE
REVIEW**

CRITERIA: ORS Chapter 222, Metro Code Chapter 3.09, Comprehensive Plan Policies 2 and 10, Community Development Code Chapters 18.320 and 18.390.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation (ZCA2006-00002) meets all the approval criteria as identified in ORS Chapter 222, Metro Code Chapter 3.09, Comprehensive Plan Policies 2 and 10, Community Development Code Chapters 18.320 and 18.390. Therefore, staff recommends APPROVAL of ZCA2006-00002 by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information:

The subject site is located along the western boundary of the City of Tigard; the majority of Sunrise Lane is contiguous to the City limits. The site is part of unincorporated Bull Mountain and the City of Tigard's Urban Service Area.

The subject site is predominantly in public ownership and is either currently used for public purposes or will be in the future. The City intends to use the publicly owned land for the purposes of a reservoir and parkland. The Menlor Reservoir provides public water storage facilities for the Tigard Water District. The subject site also includes land banked for the Cache Creek Natural Area and future public water facilities: *The City of Tigard Water Distribution System Hydraulic Study* (May 2000) shows a future 550'-elevation-zone Reservoir #1 located on City-owned land adjacent to Sunrise Lane.

The subject site also includes residential land (vacant and in current use). There are four primary structures located on the subject site: the Menlor Reservoir and three homes. The City approved a lot line adjustment (MIS2006-00012) for 2S105DC, Tax Lot 100 on July 7, 2006. The two southernmost residential parcels (2S108AB, Tax Lots 1200 and 1201) are currently under development review; the owner has submitted separately a land-use application for a 17-lot subdivision with a total of 30 dwelling units (SUB2006-00003). The application was submitted to the City on January 31, 2006 when the City still provided development services to the Urban Service Area as agreed in the *Washington County – Tigard Urban Services Intergovernmental Agreement (terminated July 20, 2006)*. This application is a separate land-use decision with its own set of review criteria and will not be addressed in this report.

The majority of the subject site contains steep slopes, defined as 25% slope or greater. The City of Tigard Community Development Code requires Sensitive Lands permits for development on parcels with steep

slopes. There are two wetlands designated as Title 3 wetlands in the subject area. Goal 5 and Bull Mountain Community Plan natural resources exist on a majority or portions of the subject tax lots, protection for which will be considered if or when any of the proposed territory develops.

SECTION IV. APPLICABLE REVIEW CRITERIA, FINDINGS AND CONCLUSIONS

State: ORS Chapter 222

Regional: Metro Code Chapter 3.09

City: Comprehensive Plan Policies 2 and 10, Community Development Code Chapters 18.320 and 18.390.

A. CITY OF TIGARD COMMUNITY DEVELOPMENT CODE (TITLE 18)

Staff has determined that the proposal is consistent with the relevant portions of the Community Development Code based on the following findings:

1. Chapter 18.320.020: Approval Process and Standards.

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

- 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and**

The City of Tigard Comprehensive Plan's Urbanization Chapter (Policy 10.1.1) defines services as water, sewer, drainage, streets, police, and fire protection. Each service is addressed below.

Policy 10.1.1 further defines capacity as "adequate capacity, or such services to be made available," to serve the parcel "if developed to the most intense use allowed," and "will not significantly reduce the level of services available to developed and undeveloped land in the City of Tigard." The proposed annexation territory is currently zoned R-6, a Washington County residential zone designated for residential development at no more than six (6) units per acre and no less than five (5) units per acre. With annexation, the subject site's zoning would change to R-7 per Table 320.1 (Title 18). This equivalent city zoning provides for medium-density, single-family residential with a minimum residential lot size of 5,000 square feet.

As noted earlier, the subject site's current and planned uses are mostly public: water provision and a natural area. The property deeds for certain parcels limit the City to these two uses. If the remaining 9.14 residential acres were developed to their designated capacity of 7 units per gross acre, without allowance for the sensitive lands present, the sites could accommodate approximately 63 units total. This gross calculation breaks down as follows: two northeast parcels (Dyer), 21 units; two southwest parcels (Brentwood), 42 units.

These figures were used for City department evaluations of Policy 10.1.1 of the available services. When these sites develop, the applicant will be required to connect to public service facilities. The land-use review process will identify specific service provisions and require additional facilities or upgrades as appropriate, as well as consider the sensitive lands present.

Water – City of Tigard Public Works. The City of Tigard's water system has the capacity to provide the minimum State of Oregon water service requirements for the proposed annexation,

according to Public Works Dept. Project Engineer Rob Murchison. Murchison's review concluded that the parcels developed to the most intense use allowed will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. Attachment A includes Murchison's Aug. 16, 2006, memo and a map of water serviceability to the annexation area that identifies area water lines. Murchison's memo also notes that the proposed development (Brentwood) may require upsizing and a 8" connection to the existing system; again, that application is a separate land-use decision with its own set of review criteria and will not be addressed in this report. The land-use review process will identify specific service provisions and require additional facilities or upgrades as appropriate based on the specific development proposal. Tigard City Engineer Gus Duenas further confirms that the City has adequate capacity ("Memorandum," Attachment B) and states that "the City has the ability and capacity to determine what specific improvements may be needed and the ability and capacity to provide service through its existing system and any additional infrastructure that will be required when development occurs."

Sewer – Clean Water Services/City of Tigard. Tigard City Engineer Gus Duenas ("Memorandum," Attachment B) reviewed the proposal and provided the following comments:

"Sanitary sewer service is provided at the retail level by the City and at the wholesale level by Clean Water Services (CWS). As to the capacity of the City's system, the City is capable of providing retail level sewer service without significant reduction in the level of services provided to developed and undeveloped properties in the City. As with the water system, some local lines will be required to be provided by the developer at the time of the development. The City is prepared to accept, operate and maintain public sewers constructed within the annexed area. Sewer service can be extended from CWS facilities in Menlor Lane and 154th Avenue located north of the site. The City is capable of determining what additional facilities will be required and of administering all portions of the retail sanitary sewer system, both existing and future additions in the area to be annexed, without significant reduction in the level of services provided to properties in the City."

Drainage – Clean Water Services/City of Tigard. Tigard City Engineer Gus Duenas ("Memorandum," Attachment B) reviewed the proposal and provided the following comments:

"Storm drainage service, like sanitary sewer service, is provided jointly by the City and CWS. Site specific drainage facilities will be required at the time of development and will be developed and constructed in accordance with City standards. The retail system as the capacity to provide adequate storm drainage without significant reduction in the level of services provided to developed and undeveloped properties in the City."

Streets – City of Tigard Capital Construction & Transportation Division. The City's Transportation System Plan (TSP) standards apply. The proposed annexation territory is located adjacent to Sunrise Lane, which is designated a neighborhood route in the City's Transportation System Plan (TSP). In addition, the southernmost portion of the proposed annexation territory (WCTM 2S108AB01201) fronts directly on SW Bull Mountain Road, which the City's TSP designates as a collector. Additional roads to serve the proposed annexation territory include 150th Avenue, Roshak Road, 154th Avenue, and other surrounding streets. Tigard City Engineer Gus Duenas ("Memorandum," Attachment B) reviewed the annexation proposal and concluded that some improvements to these streets may be required as part of the development of the annexed area, including extension of existing streets into the area. However, Duenas determined that the

City can provide services to this site, and "doing so will not significantly reduce the level of services to developed and undeveloped land within the City of Tigard."

Police – City of Tigard Police Department. The City of Tigard's Police Department has reviewed the annexation proposal and stated that the proposed annexation would not impede current levels of service to existing developed and undeveloped areas in the City of Tigard. If the area is annexed, Tigard Police can provide adequate services to the proposed area. (Attachment C).

Fire – Tualatin Valley Fire and Rescue (TVF&R). Tualatin Valley Fire and Rescue (TVF&R) already serves the proposed annexation territory. Additionally, TVF&R reviews all subdivision development proposals and annexation proposals for the City of Tigard and would provide additional comments at that time.

Based upon this review, staff finds that all public services (as defined by the Comprehensive Plan) are available to the proposed annexation territory and all public services have sufficient capacity to provide service to the proposed annexation territory.

2. The applicable Comprehensive Plan policies and implementing ordinance provisions have been satisfied.

Three Comprehensive Plan policies apply to proposed annexation: 2.1.1, 10.1.1., and 10.1.2. Staff has determined that the proposal has satisfied the applicable Comprehensive Plan policies based on the following findings:

Policy 2.1.1: Citizen Involvement. The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

The City maintains an ongoing citizen involvement program. To assure citizens will be provided an opportunity to be involved in all phases of the planning process, the City provides notice for Type IV land-use applications. The City posted, mailed and published notice of the public hearing as follows. The City posted the hearing notice at four public places on August 11, 2006: Tigard Library, Tigard City Hall, Tigard Permit Center, and in the general vicinity of the proposed territory on SW Sunrise Lane and on SW Bull Mountain Road near SW Roshak Road. The City published notice of the hearing in *The Tigard Tualatin Sherwood Times* for two successive weeks (September 7, 2006 and September 14, 2006) prior to the September 26, 2006, public hearing. The City also mailed notice to all interested parties and surrounding property owners within 500 feet on August 7, 2006. In addition, the City maintains a list of interested parties organized by geography. Notice was mailed to interested parties in the West area on August 7, 2006, which includes former Citizen Involvement Team contacts and CPO 4B, the citizen participation organization for the area. Staff finds that this policy is met.

Policy 10.1.1: Urbanization. Prior to the annexation of land to the City of Tigard,
a) the City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard: 1. Water; 2. Sewer; 3. Drainage; 4. Streets; 5. Police; and 6. Fire Protection.

As addressed under 18.320.020 above, adequate service is available to the proposed annexation

territory. Upon annexation, the proposed territory will be zoned R-7, a medium-density single-family residential zone with a minimum residential lot size of 5,000 square feet. The privately owned properties have an estimated maximum density of 63 units (not taking into account sensitive lands).¹ If they develop, the developer(s) will be required to connect the properties to public service facilities, such as sewer, storm drainage and water, and provide the necessary street improvements. Based on comments from City of Tigard staff, there is adequate capacity to serve the annexation area (water, sewer, drainage, streets, police, fire protection) if developed to the most intense use allowed, and it will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard.

The City of Tigard department of Public Works has reviewed the annexation proposal and states that the City's water system can provide the minimum State of Oregon water service requirements for the proposed territory based on the maximum density permitted. Public Works states that water is available in quantity and quality and has not indicated that there would be a reduction in its capacity to provide water to the proposed annexation territory or reduce the level of service to the entire City. The Police Department reviewed the proposal and has no objections. The Engineering Department reviewed the proposal and has no objections. The Engineering Department confirmed that sewer service, storm drainage and street access are available to the site. Tualatin Valley Fire and Rescue (TVF&R), the current provider to the proposed territory, did not raise any objections. Staff concludes that there is adequate capacity to serve the proposed territory (water, sewer, drainage, streets, police, fire protection) if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard.

b) If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: 1. The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: a) Water, b) Sewer, c) Drainage, and d) Streets. 2. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

This criterion does not apply: No capital improvements program requires a nonremonstrance agreement for this area. Some urban services are already available for the proposed annexation territory; others are available nearby and would require connections from the proposed annexation area. However, these public facility requirements will be assigned as part of any subdivision review when an application is submitted.

c) The City shall provide urban services to areas within the Tigard Urban Planning Area or within the Urban Growth Boundary upon annexation.

The Tigard Urban Planning Area (as defined in the *Washington County – Tigard Urban Planning Area Agreement (UPAA (July 2006))*; see Attachment D of application submittal) includes the proposed annexation territory. The City is the designated urban services provider for the services defined in the *Tigard Urban Service Agreement (TUSA) (2002)* and subsequent operating agreements: police; parks, recreation and open space; roads and streets; sanitary sewer and storm water (through an operating agreement with Clean Water Services); and water service. Upon annexation, those services will be provided according to the City's current policies. Staff finds that this policy is met.

¹ Maximum density was calculated using formula provided in Code Chapter 18.715.

Policy 10.1.2: Urbanization. Approval of proposed annexations of land by the City shall be based on findings with respect to the following: a) The annexation eliminates an existing “pocket” or “island” of unincorporated territory; or, b) The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City; c) The Police Department has commented upon the annexation; d) the land is located within the Tigard Area of Interest and is contiguous to the City boundary; e) The annexation can be accommodated by the services listed in 10.1.1(a).

- a) The proposed annexation does not eliminate an existing pocket or island of unincorporated territory. It does remove portions of an existing pocket (“Dyer” property) and would incorporate City-owned land and publicly owned land that provides Tigard residents with public services.
- b) As stated earlier, only 9.14 acres of the proposed annexation area are in private ownership and zoned for residential development. The remaining acreage consists of land in public ownership for public services, including land for the public water system and a natural area, which require limited services. The City of Tigard Police Department has reviewed the proposed annexation and has no objections. The department stated (Attachment C) that “the proposed boundary for the annexation does not appear to present any obstacles for emergency response by the Police Department.” It should also be noted here that the owners of three adjacent properties on Sunrise Lane have expressed the desire to join this proposed annexation (15180, 14625, and 15110 SW Sunrise Lane); the annexation of those additional properties would eliminate additional pockets and create a more regular boundary. However, the current proposal does not include those properties.
- c) As shown in B. above, the City of Tigard Police Department has commented on the annexation.
- d) The *UPAA (July 2006)* includes the proposed annexation territory within Tigard’s Area of Interest. The proposed annexation territory is contiguous to the City along the site’s east boundary and Sunrise Lane.
- e) Lastly, as section 10.1.1.(a) demonstrated, the annexation can be accommodated by the following services: water, sewer, drainage; streets; police; and fire protection.

Therefore, staff finds that the proposed annexation meets Policy 10.1.2.

Policy 10.1.3: Urbanization. Upon annexation of land into the City which carries a Washington County zoning designation, the City of Tigard shall assign the City of Tigard zoning district designation which most closely conforms to the county zoning designation.

Chapter 18.320.020 C of the Community Development Code provides specifics on this conversion.

The proposed annexation territory’s Washington County designation is R-6. Table 320.1 summarizes the conversion of the County’s plan and zoning designations; R-6 County zoning converts to the City’s R-7 zoning. As this is a Zone Change Annexation (ZCA) application, upon approval and execution of the proposed annexation, the territory will assume R-7 zoning to conform with the table below. Additionally, the City’s Comprehensive Plan designation for medium-density residential will be applied to this area.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial■

Chapter 18.320.020

C. Assignment of comprehensive plan and zoning designations.

The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

As the previous section demonstrated, the City of Tigard R-7 zoning district is the most similar to Washington County's R-6 zoning district. The proposed territory is currently R-6 and will automatically become R-7 upon annexation. This zone conversion will occur concurrently with the annexation process. There have been no requests for zoning other than R-7.

City of Tigard Community Development Code

2. Chapter 18.390.060: Type IV Procedure

Annexations are processed by means of a Type IV procedure, as governed by Chapter 18.390 of the Community Development Code (Title 18) using standards of approval contained in 18.390.020(B), which were addressed in the previous section. Chapter 18.390 requires City Council to hold a hearing on an annexation. It also requires the City to provide notice at least 10 days prior to the hearing by mail and to publish newspaper notice; the City mailed notice on August 7, 2006, and published public notice in *The Tigard Tualatin Sherwood Times* for two successive weeks (September 7, 2006, and September 14, 2006,) prior to the September 26, 2006, public hearing.

Additionally, Chapter 18.390.060 sets forth five decision-making considerations for a Type IV decision:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;

The City's Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission to be in compliance with state planning goals. As reviewed above, the annexation proposal meets the existing Comprehensive Plan policies and therefore is in compliance with state planning goals.

2. Any federal or state statutes or regulations found applicable;

ORS 222:

State law (ORS 222.120(4)(b), ORS 222.125, ORS 222.170(1) and (2)) allows for a city to annex contiguous territory when owners of land in the proposed territory to be annexed submit a petition to the legislative body of the city. ORS 222.120 requires the city to hold a public hearing before its legislative body (City Council) and provide public notice to be published once each week for two successive weeks prior to the day of the hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

The property owners (or their representatives) of all 11 parcels have submitted signed petitions for annexation to the City. The proposed annexation territory is contiguous to the City along the site's east boundary and Sunrise Lane.

The City published public notice in *The Tigard Tualatin Sherwood Times* for two successive weeks (September 7, 2006, and September 14, 2006,) prior to the September 26, 2006, public hearing and posted the hearing notice at four public places on August 11, 2006: Tigard Library, Tigard City Hall, Tigard Permit Center, and in the general vicinity of the proposed territory. Staff finds that the provisions of ORS 222 have been met.

3. Any applicable METRO regulations;

Chapter 3.09 of the Metro Code (Local Government Boundary Changes) includes standards to be addressed in annexation decisions, in addition to local and state review standards. Note that the report is available 15 days before the hearing (September 11, 2006, for an September 26, 2006, hearing). Staff has determined that the applicable METRO regulations (Metro Code 3.09.040(b) &(d)) have been met based on the following findings:

Metro 3.09.040 (b)

(b) Not later than 15 days prior to the date set for a change decision, the approving entity shall make available to the public a report that addresses the criteria in subsections (d) and (g) below, and that includes at a minimum the following:

(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;
As addressed previously in this report, urban services are available to the affected territory.

(2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;

As addressed previously in this report, the annexation proposal complies with all applicable provisions of urban service provider agreements, *UPAA (2006); and TUSA (2002)*.

(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;

As addressed previously in this report, the annexation proposal complies with all applicable policies of the City of Tigard Comprehensive Plan and urban service provider agreements (*UPAA (2006)* and *TUSA (2002)*). The proposed annexation territory is within the Urban Growth Boundary and subject to the Regional Framework Plan and Urban Growth Management Functional Plan provisions. There are no specific applicable standards or criteria for boundary changes in the Regional Framework Plan or the Urban Growth Management Functional Plan. However, the City's Comprehensive Plan and Development Code have been amended to comply with Metro functional plan requirements. By complying with the Development Code and Comprehensive Plan, the annexation is consistent with the Functional Plan and the Regional Framework Plan.

(4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and

The proposed territory will remain within Washington County but will be required to be withdrawn from the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation.

(5) The proposed effective date of the decision.

The public hearing will take place September 26, 2006. If the Council adopts findings to approve ZCA2006-00002, the effective date of the annexation will be October 26, 2006.

Metro Code 3.09.040 (d)

(d) An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

1. Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

As addressed previously in this application, the annexation proposal complies with all applicable provisions of urban service provider agreements (*UPAA (2006)* and the *TUSA (2002)*). The *TUSA* includes the proposed annexation territory. The agreement states that the County and City will be supportive of annexations to the City, and the City shall endeavor to annex the Bull Mountain area in the near to mid-term (by 2005-2007, as projected in the *TUSA*). The proposed annexation is in the Bull Mountain Area and is contiguous to city limits. Therefore, the proposed annexation is consistent with these agreements.

2. Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The *UPAA (2006)* includes the proposed annexation territory. The City has followed all processing and notice requirements in the *UPAA*, providing Washington County with 45-day notice prior to the public hearing. The agreement states that "so that all properties within the Tigard Urban Service Area will be served by the City, the County and City will be supportive of annexations to

the City.” The City also provided notice to the affected CPO (CPO 4B) per the agreement. The annexation proposal is consistent with this agreement.

3. Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

As previously stated in this report, this proposal meets all applicable City of Tigard Comprehensive Plan provisions. This criterion is satisfied.

4. Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;

This criterion was addressed under Metro Code 3.09.040(b). By complying with the City of Tigard Community Development Code and Comprehensive Plan, the annexation is consistent with the Functional Plan and the Regional Framework Plan.

5. Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is consistent with the terms of the *TUSA (2002)*, which ensures the timely, orderly, and efficient extension of public facilities and urban services; it is contiguous to existing city limits and services; and lastly, urban services are available to the proposed annexation territory and have not been found to significantly reduce existing service levels.

6. The territory lies within the Urban Growth Boundary; and

The proposed territory is within Metro’s Urban Growth Boundary.

7. Consistency with other applicable criteria for the boundary change in question under state and local law.

In previous sections, this report reviewed the proposal’s consistency with other applicable criteria and found it to be consistent.

(Tigard CDC 19.390.060)

4. Any applicable comprehensive plan policies; and

As demonstrated in previous sections of this report, the proposed annexation is consistent with, and meets, all applicable comprehensive plan policies.

5. Any applicable provisions of the City’s implementing ordinances.

There are no specific implementing ordinances that apply to this proposed annexation. Chapter 18 of the City Code will apply to development of the property.

SECTION VII. OTHER STAFF COMMENTS

The City of Tigard Public Works, Engineering and Police Departments have reviewed the proposal and have no objections to it and have not indicated that the proposed annexation would reduce their capacity

to provide services to the proposed annexation territory or reduce the level of City services. Full comments are provided in the attachments listed below.

Attachment A: "Memorandum," from Rob Murchison, Public Works Dept. Project Engineer

Attachment B: "Memorandum," from Gus Duenas, Engineering Division

Attachment C: E-mail from Jim Wolf, Tigard Police Department

SECTION VIII. AGENCY COMMENTS

Tualatin Valley Fire and Rescue has reviewed the annexation proposal and has no objections, comments or conditions.



PREPARED BY: Emily Eng
Assistant Planner

9/13/2006

DATE



REVIEWED BY: Tom Coffee
Community Development Director

9-13-2006

DATE



MEMORANDUM

TO: Mayor Dirksen, City Council

CC: Craig Prosser, Tom Coffee, Dick Bewersdorff

FROM: Emily Eng

RE: ZCA2006-00002 Cach Creek Area Annexation

DATE: October 5, 2006

This memo identifies changes to the Cach Creek Area Annexation Proposal. On September 25, 2006, applicant John Noffz of Sun Ridge Builders, withdrew the Brentwood Estates property (Washington County Tax Map 2S108AB, Tax Lots 1200 and 1201), changing the original proposal. In addition, one tax lot number (2S105DC, Tax Lot 100) has been removed because it doesn't exist and was incorrectly shown on the tax map. City Council held a public hearing for the annexation on September 26, 2006 and decided to continue the hearing on October 10, 2006 and leave the record open for additional information and public comment. The supplemental exhibits below have been attached to this memo:

Supplemental Exhibit A: Supplemental Findings in Support of the Cach Creek Area Annexation

Supplemental Exhibit B: Additional Information and Public Comments Submitted to the Record

Supplemental Exhibit C: Assessed Value of Properties to be Annexed

The following changes apply to the Staff Report:

Page 1

- Sun Ridge Builders should be removed as an applicant and owner.
- Under proposal, "Eleven (11) parcels" should be changed to "Eight (8) parcels." Total acreage should be changed from 40.93 acres to 35.78 acres. (At the hearing, I estimated that the total revised acreage was 34.82, but after re-surveying the site, it is 35.78.)
- Under location, the withdrawn parcels (Washington County Tax Map 2S108AB, Tax Lots 1200 and 1201) should be deleted. In addition, Washington County Tax Map 2S1105DC, Tax Lot 100 should be deleted. These were included as a result of a tax map error.
- Under current zoning designation, the County designation R-15 should be added because two of the City-owned properties are zoned R-15..
- Under equivalent zoning designation, the City designation R-25 should be added because that is the zone that most closely reflects the County R-15 designation.

Page 2

- Second paragraph from the bottom, the three sentences regarding the two Brentwood parcels should be deleted.

Page 3

- Third paragraph from the bottom, maximum density of the privately-owned property should be calculated based on a total of 3.03 acres instead of 9.14 acres. Therefore, the estimated maximum residential units is approximately 21 and not 63, not taking into account sensitive lands.

Page 4

- First paragraph, concerning Public Works' comments on water, the sentence regarding the Brentwood parcels should be deleted.
- Last paragraph, third sentence from top should be deleted because it relates to the Brentwood parcels. Concerning roads that serve the proposed annexation territory in the next sentence, "Roshak Road" should be deleted because it relates to the Brentwood parcels.

Page 6

- First paragraph, second full sentence, the estimated density should be residential 21 units for the privately-owned property and not 63 units.
- First paragraph, last sentence states, "Based on comments from City of Tigard staff, there is adequate capacity to serve the annexation area (water, sewer, drainage, streets, police, fire protection) if developed to the most intense use allowed, and it will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard." City staff reviewed the proposal when the estimated maximum density was 63 acres; therefore, because the maximum density is now 21 residential units, the City's assessment of adequate capacity overestimates the burden of the annexation on City services. In either case, whether 63 or 21 units, the City has adequate capacity to serve the proposed annexation territory.
- Second paragraph from top states, "The City of Tigard department of Public Works has reviewed the annexation proposal and states that the City's water system can provide the minimum State of Oregon water service requirements for the proposed territory based on the maximum density permitted." The maximum density referred to was 63 units; however, it is now 21.

Page 7

- In response "b," the privately owned acreage should be changed from 9.14 acres to 3.03.
- Bottom paragraph should be deleted and replaced with "Upon approval and execution of the proposed annexation, the territory will assume zoning to conform to the table below. In addition, the City's Comprehensive Plan designation will be applied to this area."

Page 8

- Response to "C" should be deleted and replaced with "Six parcels in the proposed territory are currently zoned Washington County R-6 and two parcels are zoned Washington County R-15. Upon annexation, the six parcels will automatically become City of Tigard R-7 and the two parcels will become City of Tigard R-25."

Page 9

- Under the response to #2, “property owners of all 11 parcels” should be changed to “property owners of all 8 parcels.”

Page 10

- The response to #5 states, “The public hearing will take place September 26, 2006. If the Council adopts findings to approve ZCA2006-00002, the effective date of the annexation will be October 26, 2006.” However, the public hearing is being continued on October 10, 2006. If the Council adopts the ordinance approving ZCA2006-00002, the effective date of the annexation would be November 10, 2006.

SUPPLEMENTAL FINDINGS IN SUPPORT OF THE CACH CREEK AREA ANNEXATION

1. The City Council held a duly noticed public hearing on September 26, 2006, consistent with ORS 222.120, to consider this annexation proposal. The City allowed written comments concerning the proposed annexation to be submitted before, during and for a period of seven days after the hearing. The Council also received oral comments at the hearing.
2. The notice of the hearing proposed annexation of property owned by the City of Tigard, the Tigard Water District, the Trust for Public Land, Brentwood Homes, and Jon Dyer. The Trust for Public Lands and Brentwood Homes have indicated that they no longer wish their property to be included in the proposed annexation. City staff has proposed that the annexation include only those properties owned by the City of Tigard, the Tigard Water District, and Jon Dyer. The Council agrees that the annexation should be and is limited to the properties owned by the City of Tigard, the Tigard Water District, and Jon Dyer. The legal description and a map of the properties being annexed are included in the ordinance as Exhibits A and B.
3. The City has written consents to annexation signed by a duly authorized official of the City of Tigard and by Jon Dyer. It also has a petition for and consent to annexation signed by a duly authorized official of the Intergovernmental Water Board (IWB) that covers the property owned by the Tigard Water District. The IWB consent reflects a vote by the IWB to petition for and consent to the annexation. The Council finds that the Intergovernmental Water Board has authority to act for the Tigard Water District and other members of the IWB as to the property proposed for annexation and properly exercised that authority in signing the petition for and consent to annexation. The record includes a letter from King City, a member of the IWB, expressly agreeing with the consent to annexation, and written minutes of the IWB meeting showing the City of Durham's vote in favor of the consent and statements in support of consent by Durham's representative. The minutes show that the Tigard Water District representative abstained from voting and did not oppose the action of the IWB in consenting to the annexation. No one has claimed that the IWB lacked authority to act on behalf of the Tigard Water District.
4. Under ORS 222.170(4), property that is publicly owned is not considered when determining the number of owners, the area of land, or assessed valuation unless the owner of the property files a statement consenting to or opposing annexation. Washington County has not submitted to the City a statement consenting to or opposing the annexation, so County roads and rights-of-way that are within the area proposed for annexation are not considered in determining whether the City has sufficient consents.
5. The City has the written consent of all of the owners of property proposed to be included in the annexation. There are no registered voters in the area proposed for annexation. The City therefore may proceed with annexation without a vote in the territory to be annexed under ORS 222.125 (consent of all the owners and at least 50 percent of voters,

if any), ORS 222.170(1) (consent of half the owners of half the land with half the assessed value, and ORS 222.170(2) (consent of a majority of the electors and owners of half the property).

6. Even if the consent for the property owned by the Tigard Water District is not counted, the City has sufficient consents to proceed with the annexation without an election in the territory to be annexed under both ORS 222.170(1) and 222.170(2). The property owned by the City of Tigard and Jon Dyer totals 21.04 acres, more than half of the total net area of 32.07 acres. The City and Mr. Dyer are two of three owners – more than half of the owners. The total assessed value of the property owned by the City and Mr. Dyer is \$970, more than half of \$970, which is the total assessed value of all the total net property value in the area proposed for annexation. Because there are no resident voters in the area, the number of voters does not need to be considered under ORS 222.170(2). The City takes official notice of the assessed values for the properties as listed by Washington County. The City notes that the market value for the Tigard Water District property, as established by Washington County, is \$1,316,700, which is less than half the total market value of 3,582,850 of all the properties in the area to be annexed.

Findings Addressing Comments Received

7. The City received written comments from Karen and John Molloy, Lisa Hamilton-Treick, Richard A. Franzke, Michael Orth, and Lawrence R. Derr in opposition to the opposed annexation. The City also received inquiries from other property owners as to the possibility of including their properties in the annexation. At the September 26, 2006, hearing, Ms. Hamilton-Treick and Kinton Fowler testified in opposition to the proposed annexation, and Linda Walsh offered testimony that could be considered critical of the annexation.
8. On August 8, 2006, the Washington County Board of Commissioners called an election on the proposed incorporation of the City of Bull Mountain. The area proposed for annexation is within the area proposed to be included within the proposed City of Bull Mountain. The City has concluded, on advice of its City Attorney, that it cannot process petitions for annexation received after the time the proposed incorporation was referred to the voters. Therefore, it is including in the proposed annexation only properties for which it received a petition for and consent to annexation prior to August 8, 2006 and is not adding any properties to the proposed annexation territory. The City received petitions for annexation for all properties included in the proposed annexation prior to August 8, 2006.

Findings Relating To Comments Submitted by Lawrence R. Derr

9. Lawrence R. Derr submitted written comments on October 3, 2006, on behalf of Lisa Hamilton-Treick. Mr. Derr argues that the City cannot proceed with the annexation because the area proposed for annexation is within the area of the proposed City of Bull Mountain. Mr. Derr argues that the “City has taken no actions to initiate this annexation

that are prior in time to the annexation procedures.” The City concludes that the relevant date for an incorporation proceeding is the date that the County acts to place the matter on the ballot. *Landis v. City of Roseburg*, 243 Or 44, 411 P2d 282 (1966). The City further concludes that the relevant date for annexations is the date that the petitions are filed with the City. ORS 222.111(2). This annexation was initiated no later than August 4, 2006, when the last of the petitions, that of Mr. Dyer, was received by the City. August 4, 2006, was before August 8, 2006, when the County Board acted, so the City may proceed with the annexation, notwithstanding the actions to incorporate the City of Bull Mountain.

10. Mr. Derr argues that the annexation is in violation of Metro Code Section 3.09.040(a)(1) because the City lacks jurisdiction. The City has jurisdiction, based on the filing of the petitions for annexation. Mr. Derr further argues that the City is in violation of Metro Code Section 3.09.050(3)(5) because the annexation is not consistent with the orderly provision of public facilities and services because it is in competition with the proposed Bull Mountain incorporation. The annexation will provide for the orderly provision of public facilities and services by allowing Tigard services to be provided in the area to be annexed and would also provide for the orderly provision of parks and water services, given that the properties owned by the City of Tigard and the Tigard Water District are planned to be used for parks and water system purposes. Mr. Derr alleges that the annexation would be contrary to Metro Code 3.09.050(d)(7) because the annexation would be illegal. The annexation would not be illegal. The proposed annexation is consistent with Metro Code 3.09.040(a)(1), 3.09.050(d)(5) and 3.09.050(d)(7).
11. Mr. Derr argues that the City failed to provide for “a public hearing necessary to avoid an election under ORS 222.120(2).” The City Council held a public hearing on September 26, 2006, in compliance with the hearing requirement.
12. Mr. Derr argues that some or all of the petitions did not comply with the requirements of Metro Code 3.09.040. Mr. Derr has not identified any way in which the petitions failed to comply with Metro Code Section 3.09.040. Furthermore, Metro Code Section 3.09.040 is a section relating to submission requirements, and does not establish approval criteria. The City, by processing the petitions, has accepted that they are sufficient to allow the City to make a decision based on the applicable criteria.
13. Mr. Derr argues that Sunrise Lane is a county road and that the county has neither petitioned for nor consented to the annexation. Under ORS 222.170(4), publicly owned property may be annexed but does not count in the consideration of the sufficiency of the consents unless the public owner consents or objects. The County has not consented or objected, so the area is not counted in determining the sufficiency of the consents, even though it is included in the annexation.
14. Mr. Derr further argues that the annexation is a cherry stem annexation and therefore not justified. Even if this annexation could be considered a cherry stem annexation, cherry stem annexations are not illegal. *See Morsman v. City of Madras*, 191 Or App 149, 81

P3d 711 (2003) and cases cited therein. Mr. Derr has not argued that the proposed annexation is unreasonable or provided any factual basis such an argument. The annexation is reasonable because it provides for an extension of the City boundaries so that City parks and water facilities will be within the City.

15. Mr. Derr states that the City must clarify the status of zoning and applicability of the Bull Mountain Community Plan to the property proposed for annexation. The City's decision does not change the zoning or make the Bull Mountain Community Plan inapplicable to the areas being annexed.

Findings Related to Written Comments By Karen and John Molloy

16. Karen and John Molloy submitted a written comment on September 30, 2006, apparently in opposition to the annexation because the property is within the area of the proposed City of Bull Mountain. As discussed in the findings related to comments by Lawrence R. Derr, the proposed incorporation of the City of Bull Mountain does not prevent the City from proceeding with this annexation.

Findings Related to Written Comments by Michael Orth

17. Michael Orth submitted a comment on August 13, 2006, opposing the annexation prior to the vote on the incorporation of the City of Bull Mountain. As stated in the previous findings, the City finds no legal impediment to proceeding with the annexation at this time.

Findings Related to Written Comments Richard A. Franzke

18. Richard A. Franzke submitted written comments dated September 26, 2006. Mr. Franzke argued that the incorporation proceedings were initiated before the City's annexation proceedings. As discussed in Finding No. 9 above, the City has concluded that the City's proceedings have priority.
19. Mr. Franzke argued that the City should respect the will of the citizens who will be affected by its actions. The people who affected by an annexation are the property owners and voters (if any) in the territory to be annexed. The City has the consent of all property owners within the territory to be annexed and there are no voters in the territory to be annexed. The City has been forced to turn aside property owners who want to annex to the City because they are within the proposed City of Bull Mountain and did not submit petitions prior to the date the County Board referred the incorporation to the voters. Mr. Franzke suggests that the City's wish to annex these properties is based on the desire to increase tax revenues. The vast majority of the property being annexed (31.79 out of 34.82 gross acres) is publicly owned and not subject to property taxation.

Findings Related To Written Comments and Oral Testimony of Lisa Hamilton-Treick

20. Ms. Hamilton-Treick submitted written comments on September 26, 2006. Ms. Hamilton first argued that Washington County has not consented to the inclusion of the county road. Publicly owned property may be included in an annexation and is not counted in the calculation of consents unless the public owner specifically consents or objects. ORS 222.170(4). The County's lack of consent is relevant to whether the City counts the road in the total property area, but does not otherwise affect the annexation.
21. Ms. Hamilton-Treick argued that the proposed boundary creates islands and an irregular boundary. The Council finds that the boundaries of the City are sufficiently regular to be consistent with Comprehensive Plan 10.1.2. The regularity standard in the Comprehensive Plan standard is expressly related to whether police will be able to respond in an emergency situation without difficulty. The City Council finds that the fact that the vast majority of the property being annexed will be City owned and administered means that there will be no difficulties for the police in emergency situations. The only "islands" created are three properties that will be outside Tigard City limits but will be cut off from county, and possibly future City of Bull Mountain, areas only by Sunrise Lane.
22. Ms. Hamilton-Treick argued that the proposed boundaries will prevent four property owners from being included in the proposed City of Bull Mountain. Any property that is not included in the annexation but is included in the boundaries of the proposed City of Bull Mountain will be included within the City of Bull Mountain if the voters improve incorporation. As to the creation of islands, the City does not intend to use the island annexation process to annex territory if the island is created only by a road or a narrow strip of property.
23. Ms. Hamilton-Treick questioned the existing zoning designation of the property and the continued application of the Bull Mountain Community Plan. The property is currently zoned R-7 under the County's adoption of Tigard zoning. The annexation will not change the zoning. The ordinance does not provide that the Bull Mountain Community Plan will cease to be applicable to the property, so it will remain in effect as to the property.
24. Ms. Hamilton-Treick asked when the City will provide notice to LCDC of any change in zoning or plan provisions that affect the property. The City will provide notice if and when the zoning or plan provisions are changed. The questions asked by Ms. Hamilton-Treick do not provide any basis for denying the annexation petitions.
25. Ms. Hamilton-Treick argued that the City's record on Goal 5 resource protection is poor. The City Council disagrees with her statement. However, nothing in her argument relates to any applicable standard or criterion.
26. Ms. Hamilton-Treick argued that the City Council did not set a date for the hearing and that an election is therefore required. The statutory requirement is to hold a hearing, and the City did hold a hearing. Ms. Hamilton-Treick appeared at the hearing. While ORS

222.120(2) does refer to the legislative body fixing the date for a hearing, the City Council has delegated authority to set all agenda items, including hearings, to the City Manager. City Council Groundrules, adopted by Resolution 04-83. The matter was set for hearing by the City Manager, using the authority delegated by the Council.

27. Ms. Hamilton-Treick stated that a county commissioner stated that the property should be in the proposed City of Bull Mountain. That statement does not relate to any applicable approval standard or criterion. Ms. Hamilton-Treick further argues that the proposed City of Bull Mountain and the City of Tigard must work together, presumably on developing a portion of the City of Tigard property as a regional park. If the City of Bull Mountain is formed, the Tigard City Council anticipates that Tigard and Bull Mountain will work together and cooperate on a wide range of issues.
28. Ms. Hamilton-Treick asked that the record be kept open for seven days. The City Council granted that request.
29. Ms. Hamilton-Treick argued that the City should put the annexation on hold pending the vote on incorporation. The City can proceed with this annexation because the petitions were received before the incorporation was referred to the voters.
30. Ms. Hamilton-Treick submitted a letter from a deputy legislative counsel to Representative Jerry Krummel. That letter expressly states that the sole purpose of the letter is to assist members of the legislature and that it is not to be considered or used as legal advice by any other person. The City will not consider the letter or use it as legal advice.
31. Much of Ms. Hamilton-Treick's oral testimony was the same as her written comments. None of the additional statements in her oral testimony addressed any applicable standard or criterion.

Findings Related to Oral Testimony of Kinton Fowler

32. Kinton Fowler testified at the September 26, 2006, hearing. He suggested that the City hold off on the annexation until after the November 7 election to avoid a legal dispute and to get the relationship between the City of Tigard and the proposed City of Bull Mountain off to a good start. Mr. Fowler did not argue that the City was legally precluded from going ahead with the annexation.

Findings Related to Oral Testimony of Linda Rogers

33. Ms. Rogers questioned the suitability of the property for a park. The proposed park would be a nature park rather than a park with developed athletic fields. Her testimony did not raise any issue relevant to any applicable standard or criterion.

060426

Agenda Item
6

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OCT 03 2006

CITY OF TIGARD
PLANNING/ENGINEERING

September 25, 2006

Gary Pagenstecher, Associate Planner
Planning Department
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

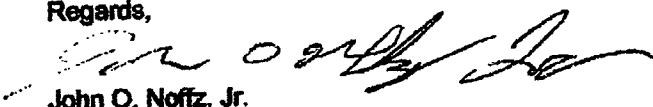
RE: Request for annexation into the City of Tigard

Dear Gary:

Due to considerations regarding the development requirements for my proposed project of Brentwood Estates (Tigard Case File # SUB2006-00003), I find that I must respectfully withdraw my request to be included in the properties to be annexed by the City of Tigard.

Thank you for your attention to this matter.

Regards,


John O. Noffz, Jr.
Owner, Brentwood Homes

ANN BOSS
LEGISLATIVE COUNSEL



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

September 20, 2006

Representative Jerry Krummel
7544 SW Roanoke Drive N
Wilsonville OR 97070

Re: Annexation and Incorporation Priority

Dear Representative Krummel:

You asked about the legality of proceedings to annex territory that are initiated after proceedings to incorporate a new city have commenced. The situation involves a petition to incorporate the proposed new City of Bull Mountain and a subsequent petition of the City of Tigard to annex all or part of the same territory.

If the proceedings of both municipalities are lawfully undertaken, the proceedings of both municipalities may be maintained and none of the proceedings are void *ab initio*, or void from the very inception of the act.¹ However, when "two municipal bodies are lawfully and fully organized, it is clear that both cannot exist for the same purpose and exercise the same authority over the same territory."² The only basis for the courts to intervene in the otherwise lawful proceedings of either municipality is to "prevent the abuses that would arise when two governmental powers are attempting to exercise authority over the same territory."³ Under those circumstances and modeled on the court's analysis of the priority of courts that share concurrent jurisdiction, the Oregon Supreme Court concluded that the first municipality to exercise jurisdiction obtains priority to complete its proceedings and that the second municipality "as a matter of policy" may not interfere with the first municipality's proceedings while those proceedings are pending.⁴ To that end, while both proceedings are pending, the first municipality may seek and be entitled to have the second municipality enjoined, or ousted in *quo warranto* proceedings, while the first municipality's proceedings are pending.⁵

Because the governing body of Washington County approved the petition to incorporate the City of Bull Mountain and set an election date, appropriate parties who favor incorporation would appear to be entitled to temporary injunctive relief to delay the City of Tigard's proceedings to annex the same territory. The injunction might properly be made permanent if the electors approve incorporation at the scheduled election. In the absence of injunctive relief, both proceedings may continue, and, if the electors reject incorporation, the City of Tigard's annexation proceedings take effect if completed in accordance with the legal requirements for annexation.

¹ *Landis v. City of Roseburg*, 243 Or. 44 (1966) (citations omitted).

² *Id.* at 48.

³ *Id.* at 52.

⁴ *Id.* at 50.

⁵ *Id.* at 51.

060926
Agenda
Item 6
800 COURT ST NE S101
SALEM OR 97301-4065
(503) 588-1243
FAX (503) 373-1043
www.lc.state.or.us

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OCT 9 2006

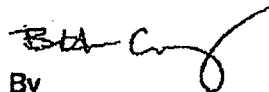
CITY OF TIGARD
PLANNING/ENGINEERING

Representative Jerry Krummel
September 20, 2006
Page 2

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Sincerely,

ANN BOSS
Legislative Counsel



By
B. Harrison Conley
Deputy Legislative Counsel

City Record
060926
Agenda Item
6

Lisa Hamilton-Treick
13546 SW Beef Bend Rd.
Tigard, OR 97224

September 26, 2006

Mayor Dirksen and Councilors
13125 SW Hall Blvd.
Tigard, OR 97223

RECEIVED
CITY OF TIGARD
PLANNING DEPARTMENT

Re: 41 Acre Cach Creek Annexation

Dear Mayor Dirksen and Members of the Council:

As a resident of unincorporated Bull Mountain and as a Co-Chief Petitioner for the proposed City of Bull Mountain I object to this annexation and Tigard's attempt to remove territory from the proposed city boundary.

Significant steps have been taken (and accepted by Washington County) by members of the community, over several months, in an effort to place incorporation before the voters on November 7, 2006.

- 1) The Economic Feasibility Statement was submitted to Washington County on May 25, 2006, along with other required documents necessary to begin the incorporation process.
- 2) On May 30, 2006, 776 petition signatures were submitted to Washington County. The required 10% of the registered voter's signatures, from within the proposed boundary, were verified.
- 3) June 8, 2006 Washington County Board of Commissioners voted to move forward with public hearings on the incorporation proposal.
- 4) Three public hearings were held; on August 8, 2006 Washington County Board of Commissioners voted unanimously to place incorporation before the voters within the proposed boundary.

I raise the following questions and issues regarding this proposed annexation:

- 1) There is a lack of consent or petition from Washington County for inclusion of the county road.
- 2) The proposed boundary creates islands and an irregular boundary which is contrary to Tigard's Comp Plan 10.1.2 which provides that approval shall be based on findings with respect to the following: a) the annexation eliminates an existing pocket or island of unincorporated territory, or b) the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City.

Tigard's plan creates islands and prevents four property owners from being included in the new city boundary. Where does this leave their vote on November 7, 2006 election only six weeks from now? One large property owner has recently withdrawn his consent to annex. This again alters the boundary.

- 3) The report and the proposed ordinance state that the property is presently zoned county R-6 and will be changed to a comparable city R-7 with the annexation by operation of the TDC 18.320.020. I ask that staff clarify why the designation is not R-7 now under County Ordinance 487?
- 4) Historically, Tigard has ignored the Bull Mountain Community Plan, or has offered annexation as a means to avoid compliance with the BMCP. What is the city's position on the Bull Mountain Community Plan as it relates to this annexation? Why doesn't it apply now under the county ordinance?
- 5) If the zoning and plan provisions change from county to city then a 45 day advance notice to LCDC is required under ORS 197.610. When will the city provide such notice?
- 6) Tigard's track record on Goal 5 resource protection is very poor. The areas proposed for annexation to Tigard are acknowledged by Tigard to have Goal 5 resources. Under Tigard's jurisdiction the level of protection will certainly decrease and will potentially cause irreparable harm to the land by compromising the natural resources and impacting neighboring properties and property owners.

7) Per ORS 222.120(2), if Council chooses not to submit annexation to a vote of the electors of the city, it shall set a date to hold a hearing where the electors may appear. Since the Council has taken no action with respect to this proposal, including not setting a date and ordering the hearing, this hearing does not dispense with the requirement for an election.

8) There are competing and unresolved jurisdictional issues which must be settle through Washington County Circuit Court or through the Land Use Board of Appeals, should Tigard choose to move forward with this annexation.

9) Washington County Commissioner Dick Schouten wisely stated during the incorporation hearings, that the best way to provide for parks in the Bull Mountain area is to keep the Cach Creek nature area, Tigard's property, and the Tigard Water District property in the new city boundary, where the combined acreage may be large enough to qualify as a regional park. The area could be best served if the new City of Bull Mountain and Tigard must work together to provide the land, improvements and maintenance dollars.

(10) Since this is a quasi-judicial hear, I request under ORS 197.763, that the record remain open for a minimum of seven days to allow introduction of additional evidence, arguments or testimony.

11) When did Tigard City Council first direct staff to begin the annexation. JHC

I request the Tigard City Council place this annexation on hold until after the November election. The incorporation proceeding was initiated prior to the annexation proceeding. Washington County has prior jurisdiction and Tigard cannot proceed until after the election and then only if the city is not approved.

Sincerely,



Lisa Hamilton-Treick

060926
Agenda Item
6

September 26, 2006
City of Tigard
Public Hearing
Testimony of Richard A. Franzke

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OCT 03 2006

CITY OF TIGARD
PLANNING/ENGINEERING

Re: Proposed annexation of 41 acres on Bull Mountain

I reside at 14980 SW 133rd Avenue
Bull Mountain, Oregon 97224

I testify this evening to remonstrate against the
City of Tigard's actions in annexation of 41 acres of land
located within the boundaries of the proposed new City of
Bull Mountain.

The parties seem to agree that "first in time has first in
right". ORS 231.031(1) provides that before circulating
a petition to incorporate a new city, the petitioners shall
file with the county clerk a petition for incorporation. The
statute provides that the clerk shall date and time stamp
the petition and shall immediately send two copies to the
county commission.

I believe that the date and time stamping of the incorporation

petition marks the beginning of the incorporation process.

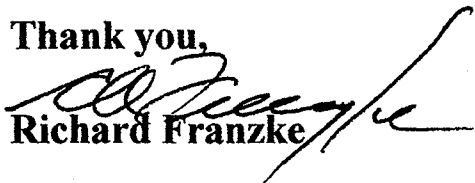
These actions were taken before the city commenced it's effort to annex the subject property. Accordingly, I believe the residents of Bull Mountain will ultimately prevail in the litigation.

The litigation, however, is NOT what I want to address this evening . What I want to address is the "wrongness" of the city's action - it is wrong, wrong, wrong. Has this council no sense of decency? Has it no respect for the will of the citizens who would be affected by it's actions? Must the lust for more tax revenue trump basic fairness?

I urge the council to do the RIGHT thing: stop the annexation effort immediately and abide the outcome of the incorporation vote on November 7th.

Thank you,

Richard Franzke



CONFIRMATION OF CONSENT TO ANNEXATION

On July 24, 2006, the Intergovernmental Water Board (IWB) signed petitions and consents to annexation to the City of Tigard for properties then shown on Washington County tax maps as:

2S105DB00400
2S105DB06100
2S105DB06200
S2105DC00100
2S105DC00200
2S105DC00300
2S105DB00400

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OCT 03 2006
CITY OF TIGARD
PLANNING/ENGINEERING

The City received those petitions and consents no later than August 1, 2006. The IWB petition and consent was on behalf of the IWB and its members. The IWB was acting for the City of Tigard in submitting the petitions and consents.

On August 7, 2006, the City published notice of a hearing on an annexation that included the above-referenced properties. That notice listed the City as the applicant and stated that the applicant is seeking annexation of property into the City of Tigard, including the above-listed properties. The notice also served as a written consent of the City to the proposed annexation.

With the recording of certain property transactions, some of the tax lots listed above have been consolidated or reconfigured. The City is currently listed as the owner on title to the following properties, all of which are included in the properties listed above:

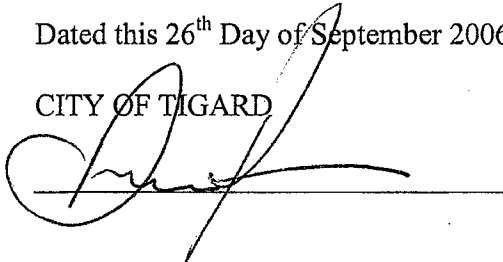
2S105DB06100
2S105DB06200
2S105DC00300
2S105DB00400

The City was also the title owner to these properties at the time that IWB signed and submitted the petitions/consents to annexation.

The City confirms that IWB had authority to consent to the annexations for all interests of the City of Tigard in any and all of the properties. The City hereby restates that it consents to the annexation as to all property that it holds title to and as to any other interest in any of the properties.

Dated this 26th Day of September 2006

CITY OF TIGARD



Rec'd 10/02/06

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OCT 9 3 2006

CITY OF TIGARD
PLANNING/ENG MEETING

Carol,

Please enter the attached documents into the Cach Creek Annexation Record:

1. July 20, 2006, Intergovernmental Water Board Agenda
2. July 20, 2006, Intergovernmental Water Board Minutes
3. July 19, 2006, Letter from King City Mayor Faes to the Intergovernmental Water Board Chairperson, Bill Scheiderich, recommending the IWB execute annexation
4. Revised July 19, 2006, Letter from King City Mayor Faes to the Intergovernmental Water Board Chairperson, Bill Scheiderich, recommending the IWB consent to annexation

If you have any questions, please contact me. Thanks!

Greer x 2595

Intergovernmental Water Board Special Meeting

Serving Tigard, King City, Durham and Unincorporated Area

AGENDA

When:
Thursday, July 20, 2006
5 p.m.

Where:
Tigard Water Building
8777 SW Burnham Street
Tigard, OR 97223

- 1. Call to Order, Roll Call and Introductions**
Call the meeting to order, staff to take roll call.
- 2. Annexation of the Clute, Menlor Reservoir and Cach Properties into the City of Tigard – Brian Rager**
Consider a motion to annex the Clute, Menlor Reservoir and Cach properties into the City of Tigard and to authorize the IWB Chair to execute an annexation request on behalf of the Board.
- 3. Next Meeting – August 9, 2006, 5:30 p.m. - Water Auditorium**
- 4. Adjournment**
Motion for adjournment.

Executive Session: *The Intergovernmental Water Board may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.*

**Intergovernmental Water Board
Special Meeting Minutes
July 20, 2006
Tigard Water Building
8777 SW Burnham Street
Tigard, Oregon**

Members Present: Patrick Carroll (arrived 5:04 p.m.), Beverly Froude, Bill Scheiderich, Dick Winn and Sydney Sherwood (alternate for Tom Woodruff)

Members Absent: Tom Woodruff

Staff Present: Assistant Public Works Director Brian Rager
Water Quality & Supply Supervisor John Goodrich
IWB Recorder Greer Gaston

1. Call to Order, Roll Call and Introductions

The meeting was called to order at 5:01 p.m.

2. Annexation of the Clute, Menlor Reservoir and Cach Properties into the City of Tigard

Commissioner Scheiderich stated the Board was considering a consent to annexation and added the Board was not taking public comment at this meeting. He noted the Board had heard public comments on this issue at its July 12, 2006, meeting and he had acted on those comments.

Commissioner Scheiderich addressed the following issues:

Consent to Annexation/Public Process

Commissioner Scheiderich emphasized the Board was not annexing the properties in question. He announced he had spoken with Washington County Counsel and confirmed the issue under consideration was whether the Board wanted to consent to annexation. This does not mean the properties will be annexed. He noted the actual annexation process would be a land use matter handled through the City of Tigard and this process would require a public hearing. The annexation decision could be appealed to the Land Use Board of Appeals.

Ownership

Commissioner Scheiderich emphasized any action taken by the Board would not affect the ownership of property.

Note: Commissioner Carroll arrived at 5:04 p.m.

Shared Ownership

Commissioner Scheiderich commented the City of Tigard has deemed the members of the Board as having an ownership interest in the properties. He added the City, as the managing agency, could have bypassed this process and asserted it had sufficient ownership to initiate the annexation on its own. In asking the TWD and two other cities to go through this process, the City was allowing for more consideration than required.

Urgency

Commissioner Scheiderich stated the City of Tigard's position was that water assets, like the reservoir, are very important and the possibility of turning these assets over to another city is too much of an unknown. The Bull Mountain petition of incorporation compelled Tigard to decide whether to leave the water properties in the unincorporated area, where they may end up within the boundaries of a new city, or to annex them now.

Impact of Boundary Changes

Commissioner Scheiderich stated the point of the upcoming Bull Mountain incorporation public hearings is solicit input, regarding boundaries and other issues, from cities or other entities that may be affected by the incorporation. Commissioner Scheiderich reported, according to County Counsel, changing the boundaries would not affect the feasibility study. The purpose of the hearings is to decide what the boundaries should be and redrawing the boundaries would not put a stop to incorporation.

Attempt to Disrupt Incorporation

Commissioner Scheiderich said he did not believe the annexation was an attempt to undermine incorporation. He added he would have serious reservations about supporting the consent to annex if he believed this to be the case.

Tax Revenue

Commissioner Scheiderich stated annexation of the properties would not affect the tax revenue of the new city, since properties owned by the City and the TWD are not taxable.

Parks

Commissioner Scheiderich explained Metro had allocated money to purchase some of the property, and although this was public money, Tigard determined how and where the money was spent. He doubted Tigard would single out non-city residents when it came to using the park and added any parks created from the annexed parcels would be regional assets.

Motion and Positions

Commissioner Scheiderich asked for a motion giving the Board's consent to annexation of the Clute, Menlor Reservoir, and Cach properties to the City of Tigard

and authorizing the Chair to sign the consent to annexation. Commissioner Carroll so moved and Commissioner Sherwood seconded the motion.

Commissioner Scheiderich asked the Commissioners to state their position.

Commissioner Carroll reported in order to protect water assets, the City of Durham recommended the annexation of the Menlor Reservoir, Clute property and Cach properties into the City of Tigard.

Commissioner Winn, as the King City representative, reported he had been directed to recommend approval of consent to annexation. He stated his initial objection was the IWB should not be in the business of annexing properties and the Board should not be used by the City of Tigard for this purpose. Commissioner Winn concluded that given Commissioner Scheiderich's assessment of the property situation, the consent to annex made sense.

Note: On 7-26-06 King City submitted a revised letter dated 7-19-06 changing the wording of their previous memo from "The City Council of King City recommends that the IWB execute annexation . . ." to "The City Council of King City recommends that the IWB consent to annexation . . ." A copy of the revised letter is on file in the IWB record.


Commissioner Sherwood, representing the City of Tigard, explained Tigard needed to protect and continue taking care of the water district property within Tigard city limits, as opposed to having the property reside within some other city.

Commissioner Froude stated she would abstain from the vote. She represents the TWD and the District had not made a recommendation.

The motion was approved by a majority vote of 4-0-1, with four yes votes and one abstention by Commissioner Froude.

Note: item # 3, Next Meeting -- August 9, 2006, 5:30 p.m. - Water Auditorium, was not discussed.

4. Adjournment: The meeting was adjourned at 5:12 p.m.


Greer A. Gaston, IWB Recorder

Date: August 9, 2006



KING CITY

15800 SW 116th Avenue, King City, Oregon 97224-2698
Phone: (503) 639-4082 • FAX (503) 639-3771

7/19/2006

Atty. Bill Scheiderich, Chairman
Intergovernmental Water Board
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97224

Dear Chairman Scheiderich:

The City Council of King City recommends that the IWB execute annexation of the Menlor Reservoir Site, Clute property and Cach properties into the City of Tigard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles R. Faes".

Charles R. Faes
Mayor



KING CITY

16200 SW 116th Avenue, King City, Oregon 97224-2693
Phone: (503) 639-4082 • FAX (503) 639-3771

7/19/2006

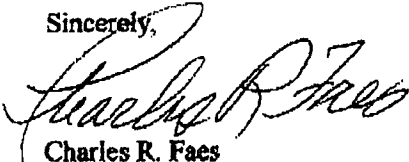
Received
07-26-06P04:23

Atty. Bill Scheiderich, Chairman
Intergovernmental Water Board
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97224

Dear Chairman Scheiderich:

The City Council of King City recommends that the IWB consent to annexation of the Menlor Reservoir Site, Clute property and Cach properties into the City of Tigard.

Sincerely,


Charles R. Faes
Mayor

Note: On 7-26-06 King City faxed this revised letter changing the wording of their previous memo from "The City of King City recommends that the IWB execute annexation..."

9/30/06

TO: Tigard City Hall

FAX# 503 598 1960

RECEIVED

OCT 03 2006

CITY OF TIGARD
PLANNING/ENGINEERING

FROM: Karen & John Molloy

FAX# 503 521 8435

As residents of Bull Mountain, we would be in favor of the Cack Creek 34 acre parcel boundary being preserved as it has been placed on the ballot by the Washington County Board of Commissioners.

Karen Molloy

RECEIVED

OCT 03 2006

CITY OF TIGARD
PLANNING/ENGINEERING

LAW OFFICES OF

JOSSELYN, POTTER & ROBERTS
425 NW 10TH AVENUE, SUITE 306
PORTLAND, OREGON 97209

Telephone: (503) 228-1455
Facsimile: (503) 228-0171

FAX COVER SHEET

FAX NUMBER: 503-598-1960
DATE: 10/3/06
TIME: 2:45
NO. PAGES: 3 (including cover sheet)
TO: Emily Eng
FROM: Larry Derr

MESSAGE

Please include the attached letter in the record for the Cach Creek annexation. Thank you.

This fax is also being sent by regular mail. X This is only being sent by fax.

The information contained in this fax is confidential and is intended only for the use of the individual or entity to whom it is addressed. It may contain information protected by the attorney-client privilege.

If you do not receive all pages, please call (503) 228-1455 and ask for Terri or Linda.

LAW OFFICES OF
JOSSELYN, POTTER & ROBERTS
THE GREGORY • SUITE 306
425 NW 10TH AVENUE
PORTLAND, OREGON 97209
TELEPHONE: (503) 228-1455

BY FAX 503-598-1960

Tigard City Council
Attn: Emily Eng
Tigard City Hall
13125 SW Hall Boulevard
Tigard, OR 97223

Re: Proposed Cach Creek Annexation

Mayor Dirksen and Members of the Council:

I represent Lisa Hamilton-Treick in connection with the above described annexation proposal. My client opposes the annexation. This letter supplements material provided to the Council by Ms. Hamilton-Treick and other opponents, all of which raise issues that must be addressed by the Council before it attempts to annex this property.

The threshold issue is whether the City can proceed at all until the result of the incorporation election for the City of Bull Mountain is known. The incorporation proceeding was initiated with the filing of valid signed petitions and a map of the proposed annexation territory with Washington County on May 30, 2006. On June 6, 2006 the Board of County Commissioners set hearing dates for July 25, August 1 and August 8, 2006 and ordered the giving of notice of the hearings. On August 8 the Board adopted an order to place the incorporation on the November 7, 2006 ballot. Notice of the action pursuant to Metro Code was subsequently given. No appeals were filed to LUBA or under Metro procedures within the prescribed times.

The territory of the proposed annexation is entirely within the area originally proposed for incorporation by the petition map and the area included in the Board order. The City has taken no actions to initiate this annexation that are prior in time to the incorporation procedures. The City does not have authority to proceed with the annexation unless and until the incorporation vote fails to favor the incorporation. Proceeding in the interim is also in violation of Metro Code sections 3.09.040(a)(1) because the City does not have jurisdiction to proceed, 3.09.050(d)(5) because doing so in the face of a competing and prior annexation proceeding is not consistent with the orderly provision of public facilities and services, and 3.09.050(d)(7) because of the violation of state law in doing so.

JOSSelson, POTTER & ROBERTS

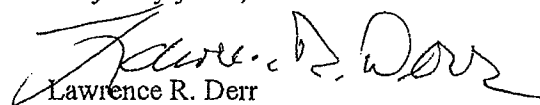
Tigard City Council
Attn: Emily Eng
Page 2 - Continued

Moreover, it does not appear from this record that the Council, the legislative body of the City, provided for a public hearing necessary to avoid an election under ORS 222.120(2), or that a petition for annexation was submitted that complies with the requirements of Metro Code 3.09.040.

Sunrise Lane is dedicated County Road. The annexation proposal does not include a petition or consent to annexation from Washington County for the extended length of Sunrise Lane included in the annexation or account for the property as property included without consent. The adjacent property that was included in the Sunrise Lane annexation is not, or within few days will not be, in the City as a result of the remand of that action by LUBA. The Court of Appeals appeal from LUBA's decision has been dismissed and LUBA either has or shortly will reissue its remand order. With the Sunrise Lane annexation area excluded from the City, the proposed annexation becomes one that relies on a long "cherry stem" approach that cannot be justified.

The City must clarify what the current status of zoning and the Bull Mountain Community Plan are for the property and what changes, if any will be made by this annexation action. If annexation changes the zone and/or removes the Bull Mountain Community Plan, notice must have been given to LCDC under state statute. In the case of the removal of the Bull Mountain Community Plan, the City must explain how the action will comply with Goal 5 for the identified natural resources, including trees, on the property.

Very truly yours,


Lawrence R. Derr

Cach Creek Area Annexation - Assessed Value of Properties to be Annexed

Tax Map	Property Owner	Acres	Assessed Value	Market Value
2S105DB06100	City of Tigard	1.36	0	424,810
2S105DB06200	City of Tigard	0.37	0	104,340
2S105DB00400	Tigard Water District	11.03	0	1,316,700
2S105DC00201	City of Tigard	12.15	0	1,157,500
2S105DD00300	Dyer	2.56	820*	980
2S105DD00200	Dyer	0.47	150*	180
2S105DC00300	City of Tigard	3.20	0	130
2S105DC00400	City of Tigard	0.93	0	578,210

*Forest Deferral